

In the Supreme Court of the United States



IN RE: DEEPWATER HORIZON

KYRT M. WENTZELL ET AL.,

Petitioners,

—v—

BP AMERICA, INCORPORATED; ET AL.,

Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit**

PETITION FOR REHEARING

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OCTOBER 25, 2018

**PARTIES TO THE PETITION AND
RULE 29.6 DISCLOSURE STATEMENT**

There has been no change in the Parties to the Petition or the Rule 29.6 Disclosure Statement. *See* Petition at ii.

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioners respectfully petition this Court for rehearing of its October 1, 2018 order denying writ of certiorari. Essentially, the Petition for Writ of Certiorari stated Petitioners' cases were improperly dismissed by the Fifth Circuit for failing to file a timely appeal. The cases stemmed from the MDL 2179 litigation on the April 20, 2010 BP *Deepwater Horizon* Oil Spill, and were ultimately appealed by Petitioners after the district court spent more than a year issuing various orders clarifying the status of Petitioners and similarly situated cases.

Since the filing of the Writ of Certiorari, the MDL court has issued yet another Order attempting to clean up the mess. On September 6, 2018, the MDL 2179 District Court issued an ORDER [Directing the Clerk to Close Certain Cases Previously Dismissed for Noncompliance with PTO 60 and PTO 63]. ("Order") (App. *infra*, 1a). This Order is directly relevant to the Petitioners' cases as its stated purpose is to formally close out cases that were arguably previously dismissed.

Three of the Petitioners' cases are listed on the Exhibit to the Order: Kyrt M. Wentzell, Individually, and Kyrt M. Wentzell, Innovations d/b/a Chum Churn, SGI Land Company, LLC; Gary Pesce d/b/a Ocean Flex OMTS. (App. *infra*, 66a). Four of the Petitioners are not listed in the Exhibit: Nelson Mast, Luke Martin, Russell Lengacher, and James Glick.

The September 6, 2018 Order is important for some obvious reasons, and at least one less apparent reason.

First, it further shows that the aftermath of the firestorm caused by the issuance of PTO 60 has still not been properly addressed. As Petitioners pointed out in their initial Petition for Writ of Certiorari, the MDL court issued a series of orders in the wake of PTO 60 attempting to identify which cases complied with PTO 60 and which ones did not. This most recent order is just another attempt to clean up the mess, and likely not the last attempt. In footnote 9 of the Order, the MDL court points out that Exhibit A is “perhaps not an exhaustive list.” (App. *infra*, 8a).

Second, the Order omits Nelson Mast, Luke Martin, Russell Lengacher, and James Glick from its list of (arguably) previously dismissed cases. Therefore, the Fifth Circuit ruling dismissing these four Petitioners was incorrect on its face and should be overturned.

Finally, in an attempt to put the matter to bed, the MDL court included some specific language about appeals in the second to last paragraph. The Order explicitly states that, “Nothing in this Order shall be construed as a judgment under Fed. R. Civ. P. 54 or Fed. R. Civ. P. 58, nor shall this Order be construed as re-opening the time for seeking post-judgment relief or filing an appeal.” (App. *infra*, 9a). This language is important because it was not included in any of the prior orders related to PTO 60 issued by the MDL court. One of the main points in Petitioners’ Petition for Writ of Certiorari was that the multiple Orders concerning PTO 60 each extended the deadline to appeal. The absence of this language in those prior orders lends additional credence to Petitioners’ argument.



CONCLUSION

The basic tenants of due process require that a party know where they stand before the Court. Petitioners have not been afforded that opportunity. The MDL Court has recently issued yet another order attempting to clarify who complied with PTO 60, this time attempting to retroactively dismiss certain cases, including some (but not all) of the Petitioners. Therefore, Petitioners ask that this Court grant Certiorari so that the case may be remanded back to the trial court for an accurate ruling as to the history and status of their cases.

Respectfully submitted,

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RULE 44 CERTIFICATE

The undersigned counsel of record for Petitioners certifies that, under penalty of perjury that:

1. This petition for rehearing is presented in good faith and not for delay.
2. The grounds of this petition are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented.



A handwritten signature in black ink, appearing to read "BRENT W. COON", is written over a horizontal line. The signature is fluid and cursive, with the name "BRENT W. COON" printed in a smaller, more formal font below it.

Executed on October 25, 2018